

HOUSE BILL 2172

By Lamberth

AN ACT to amend Tennessee Code Annotated, Section 8-30-103; Title 8, Chapter 30, Part 3 and Title 37, Chapter 5, Part 3, relative to state employees.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 8-30-303(a)(1), is amended by deleting "lists of eligibles" and substituting "pools of candidates".

SECTION 2. Tennessee Code Annotated, Section 8-30-303(a)(2), is amended by deleting "list" and substituting "pool".

SECTION 3. Tennessee Code Annotated, Section 8-30-303(d), is amended by deleting "list of eligibles" and substituting "pool of candidates", and is further amended by deleting "list" and substituting "pool".

SECTION 4. Tennessee Code Annotated, Section 8-30-304, is amended by deleting "list" in subsection (a) and substituting "pool", and is further amended by deleting "list of eligibles" in subsection (b) and substituting "pool of candidates".

SECTION 5. Tennessee Code Annotated, Section 8-30-305, is amended by deleting "list of eligibles" wherever it appears and substituting "pool of candidates".

SECTION 6. Tennessee Code Annotated, Section 8-30-305(b), is amended by deleting "list" and substituting "pool".

SECTION 7. Tennessee Code Annotated, Section 8-30-306(a)(3), is amended by deleting the subdivision and substituting:

(3) An appointing authority shall offer an invitation to interview to a minimum of three (3) applicants from the referred pool of candidates, if three (3) or more applicants

are in the pool. If fewer than three (3) applicants are in the pool of candidates, then the appointing authority shall invite each person in the pool to interview.

SECTION 8. Tennessee Code Annotated, Section 8-30-306(a)(2), is amended by deleting "list of eligibles" and substituting "pool of candidates".

SECTION 9. Tennessee Code Annotated, Section 8-30-306(a)(4), is amended by deleting the subdivision and substituting:

(4) Within thirty (30) calendar days after being referred a pool of candidates, the appointing authority shall appoint one (1) of the applicants in the pool of candidates.

SECTION 10. Tennessee Code Annotated, Section 8-30-306(b), is amended by deleting "list of eligibles" and substituting "pool of candidates".

SECTION 11. Tennessee Code Annotated, Section 8-30-307, is amended by deleting "list of eligibles" wherever it appears and substituting "pool of candidates".

SECTION 12. Tennessee Code Annotated, Section 8-30-309(a), is amended by deleting "list of eligibles" and substituting "pool of candidates", and is further amended by deleting "list" and substituting "pool".

SECTION 13. Tennessee Code Annotated, Section 8-30-312(c), is amended by deleting "list of eligibles" and substituting "pool of candidates".

SECTION 14. Tennessee Code Annotated, Section 8-30-314, is amended by deleting the section.

SECTION 15. Tennessee Code Annotated, Section 8-30-317, is amended by deleting the section.

SECTION 16. Tennessee Code Annotated, Section 8-30-318(b), is amended by deleting "a complaint" and substituting "an appeal".

SECTION 17. Tennessee Code Annotated, Section 8-30-318(c), is amended by deleting "a complaint" and substituting "an appeal".

SECTION 18. Tennessee Code Annotated, Section 8-30-318(d), is amended by deleting the subsection.

SECTION 19. Tennessee Code Annotated, Section 8-30-318(e), is amended by deleting the subsection and substituting:

(e) An employee who files an appeal under this section must file the appeal as soon as possible after the occurrence of the act or condition complained of, and not later than fourteen (14) calendar days after the date the employee became aware, or by the exercise of reasonable diligence should have become aware, of the occurrence giving rise to the appeal. If an employee fails to file the appeal within the fourteen-calendar-day period, then the right to appeal under this chapter lapses and is deemed to have been waived in its entirety by the employee.

SECTION 20. Tennessee Code Annotated, Section 8-30-318(f), is amended by deleting the subsection and substituting:

(f) For the purposes of this chapter, an appeal is filed when the appointing authority, the commissioner, or the board of appeals, depending on whether the appeal is being made under Step I, II, or III as provided in subsection (h), receives a written or electronic copy of the appeal. If a physical copy of the appeal is mailed to the agency, then the timeliness of the appeal must be determined by the date postmarked on the envelope.

SECTION 21. Tennessee Code Annotated, Section 8-30-318(g), is amended by deleting the subsection and substituting:

(g) A remedy granted under this section must not extend back more than thirty (30) calendar days before the appeal was filed.

SECTION 22. Tennessee Code Annotated, Section 8-30-318(h), is amended by deleting the subsection and substituting:

(h) The following appeal procedure is established:

(1)

(A) **Step I:** The appealing employee must reduce the appeal to writing and file the appeal with the appealing employee's appointing authority. In the appeal, the employee must provide a statement detailing why the discipline issued was in error and should be overturned or reduced. The appointing authority or appointing authority's designee must conduct an investigation if necessary, meet with the employee, and issue a decision, in writing, no later than twenty (20) calendar days after the date the appointing authority receives the appeal. The appointing authority or designee shall provide to the employee in advance of the meeting a copy of all relevant evidence in the appointing authority's or designee's possession. The appointing authority or designee shall make all reasonable efforts to gather all relevant evidence that is germane to the meeting prior to conducting the meeting for purposes of providing the information to the employee. If evidence is part of an active criminal investigation or prosecution by a law enforcement agency, or is otherwise deemed confidential under existing law, then the evidence must not be provided in advance of the hearing; provided, that the employee must be presented with the evidence during the meeting if the evidence will be relied upon by the appointing authority for purposes of issuing a decision. If applicable, the employee must acknowledge in writing that the employee was presented with the evidence. Unless otherwise provided for in this section, all evidence in possession of the appointing authority or designee prior to the meeting that was not provided to the employee in

accordance with this subdivision (h)(1)(A) must not be considered by the appointing authority for purposes of issuing a decision. Prior to issuing a decision, the appointing authority or designee may independently collect new evidence regarding a factual issue raised during a proceeding under Step I. If the appointing authority or designee independently collects new evidence, then the appointing authority or designee must provide a copy of the new evidence, as soon as practicable, to the employee. Copies of confidential evidence must not be distributed to the employee, but the employee must be afforded an opportunity to be presented with the evidence. The employee, not later than three (3) business days after receiving the evidence, may submit a response to the appointing authority or designee in support of opposition to the new evidence, and may include with the response other evidence obtained by the employee relating to the response. The appointing authority or designee must not issue a decision until the employee has been afforded the opportunity to respond to all new evidence in accordance with this subdivision (h)(1)(A), unless doing so violates the twenty-calendar-day timeframe.

(B)

(i) **Step II:** If the appointing authority or designee does not find in favor of the employee or does not issue a timely decision, then the employee may appeal to the commissioner of human resources by filing the appeal no later than fourteen (14) calendar days after the date of the appointing authority's written decision or, in the case of a failure to issue a timely decision, the date on which the appointing authority's written decision was due. The

commissioner of human resources must review the appeal and the appointing authority's decision, if any, and issue a decision in writing no later than thirty (30) calendar days after the date the appeal was filed with the commissioner. Prior to issuing a decision, the commissioner may independently collect new evidence regarding factual issues raised during a proceeding under Step I. If the commissioner independently collects such evidence, then the commissioner must provide a copy of the evidence to the employee as soon as practicable. Copies of confidential evidence must not be distributed to the employee, but the employee must be afforded an opportunity to be presented with such evidence. No later than three (3) business days after receiving the evidence, the employee may submit a response to the commissioner in support of or opposition to the new evidence, and may include with the response other evidence obtained by the employee relating to the response. The commissioner shall not issue a decision until the employee has been afforded the opportunity to respond to all new evidence or information in accordance with this subdivision (h)(1)(B)(i), unless doing so violates the thirty-calendar-day timeframe.

(ii) At Step II, it is the duty of the employee to provide a written justification to the commissioner describing why the employee believes the Step I decision was in error and ought to be overturned, reduced, or amended. If there was not a timely Step I decision, then at Step II, it is the duty of the employee to

provide a written justification to the commissioner describing why the employee believes the original dismissal, demotion, or suspension was in error and ought to be overturned, reduced, or amended. The written justification must specifically address the employee's individual circumstances and the merits of the Step I decision, if applicable. An employee failing to provide a written justification to the commissioner is not eligible to appeal to Step III.

(C)

(i) **Step III:** Subject to the prohibition in subdivision (h)(1)(B)(ii), an employee or an appointing authority may appeal the commissioner's Step II decision in writing to the board of appeals no later than fourteen (14) calendar days after receiving written notice of the decision. Subject to the prohibition in subdivision (h)(1)(B)(ii), and in the event that the commissioner does not issue a timely Step II decision, then an employee may appeal the decision of the appointing authority in writing to the board of appeals no later than fourteen (14) calendar days after the date on which the commissioner's Step II decision was due. Within ten (10) calendar days after the receipt of the appeal, the administrative law judge assigned to assist the board of appeals in the proceedings related to the appeal shall determine whether the appealing party timely satisfied all procedural requirements. If the appealing party did not timely satisfy a procedural requirement, then the appeal must be dismissed. Otherwise, the board of

appeals shall conduct proceedings in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, as modified herein.

(ii) The appealing party, whether it be the employee or appointing authority, bears the burden of proof during the Step III proceeding.

(2) Each hearing under this chapter must occur before a panel of at least three (3) members of the board of appeals, assisted by one (1) administrative law judge (ALJ). The ALJ shall assist at the hearing by ruling on questions regarding the admissibility of evidence, swearing-in of witnesses, advising members of the board of appeals on the law of the case, and ensuring that the proceedings are carried out in accordance with this chapter and other applicable law. At no time must the ALJ take part in the determination of a question of fact. An ALJ, upon timely motion, may decide a procedural question of law.

(3) The board of appeals shall issue a final decision in a proceeding no later than one hundred twenty (120) calendar days after the date of the filing of the appeal with the board of appeals unless an extension has been granted in accordance with subdivision (i)(5).

SECTION 23. Tennessee Code Annotated, Section 8-30-318(i), is amended by deleting "complaint" wherever it appears and substituting "appeal".

SECTION 24. Tennessee Code Annotated, Section 8-30-318(i)(5), is amended by deleting the subdivision and substituting:

(5) An extension to a deadline provided herein must only be granted in extraordinary circumstances and with the agreement of both parties. In any event, an



extension for the board of appeals to issue a Step III decision must not extend beyond one hundred forty (140) calendar days;

SECTION 25. Tennessee Code Annotated, Section 8-30-318(n), is amended by deleting "complainant's" and substituting "employee's", and is further amended by deleting "A complainant" and substituting "An employee".

SECTION 26. Tennessee Code Annotated, Section 8-30-318, is amended by deleting "complainant" wherever it may appear and substituting "employee".

SECTION 27. Tennessee Code Annotated, Section 8-30-320, is amended by deleting the section and substituting:

For purposes of this part and unless otherwise specified in this part, time must be calculated in accordance with § 8-30-407.

SECTION 28. Tennessee Code Annotated, Section 8-30-103, is amended by deleting subdivisions (6), (8), and (9).

SECTION 29. Tennessee Code Annotated, Sections 37-5-317 and 37-5-318, are amended by deleting "and § 8-30-314" wherever it may appear.

SECTION 30. This act takes effect July 1, 2022, the public welfare requiring it, and applies to appeals initiated on or after that date.